

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Termination of Probation:

CLARENCE SUTTON, M.D.

Physician's and Surgeon's
Certificate No. G 74582

Respondent

File No. 06-1999-104640

DECISION


The attached **Proposed Decision** is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on May 22, 2008.

IT IS SO ORDERED April 22, 2008.

MEDICAL BOARD OF CALIFORNIA

By: _____


Barbara Yaroslavsky Chair
Panel B

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition
for Penalty Relief Regarding:

OAH Case No. L2008010941

CLARENCE SUTTON JR., M.D.,

Physician and Surgeon Certificate No.
G 74582,

Petitioner.

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge, Office of Administrative Hearings, heard this matter on March 18, 2008, in Los Angeles, California.

Clarence Sutton Jr., M.D. (Petitioner) represented himself.

Chris Leong, Deputy Attorney General, represented the Attorney General of the State of California, pursuant to Government Code section 11522.

The parties submitted the matter for decision on March 18, 2008.

FACTUAL FINDINGS

1. On or about June 29, 2007, Petitioner filed the Petition for Penalty Relief, seeking to terminate probation. As discussed in more detail below, the California Medical Board (the Board) placed Petitioner's medical license on five years of probation, effective October 27, 2003. By the instant petition, Petitioner seeks to terminate probation because he claims that, due to his probationary status, he has not been able to secure employment as a surgeon and is, consequently, suffering financial hardship. The Attorney General contends probation should continue.

2. The Board issued physician and surgeon certificate number G 74582 to Respondent on July 7, 1992; it expires on August 21, 2009 unless renewed.

3(a). On June 11, 2001, the Board's then-Executive Director filed an administrative action against Petitioner entitled *In the Matter of the Accusation against Clarence Sutton Jr.*,

M.D., case number 06-1999-104640. The case alleged eight causes for discipline and prayed for the revocation of Petitioner's medical license.

3(b). On August 12, 2003, Petitioner, his attorney, and a Deputy Attorney General representing the Board signed a Stipulated Settlement and Disciplinary Order, effective October 27, 2003, settling the Accusation. Pursuant to the stipulated settlement, Petitioner admitted that he was "subject to disciplinary action under sections 2234 and 3527 of the [Business and Professions] Code in that he engaged in unprofessional conduct when he failed to properly supervise a physician assistant." Petitioner agreed that his medical license would be placed on probation for five years.

3(c). The terms and conditions of probation included, among others, a 30-day suspension from the practice of medicine, the implementation of a billing and practice monitor, enrollment and completion of a clinical training or educational program equivalent to the Physician Assessment and Clinical Education program at the University of California at San Diego School of Medicine, enrollment and completion of an ethics course, the completion of 40 hours of volunteer community service in the first year of probation, and an agreement to obey all laws. Petitioner also agreed to pay \$7,900, the Board's costs of investigation and prosecution, and the costs of probation monitoring (a cost that varied from year to year).

4. Petitioner has not fully complied with all of the terms and conditions of his probation. He has failed to make payments to the Board, as agreed. As of March 11, 2008, Petitioner still owes the full amount of the Board's investigation and prosecution costs, \$7,900. Petitioner also owes the following costs of probation monitoring: \$2,743 for 2004, \$3,173 for 2005, \$3,173 for 2006, \$3,173 for 2007, and \$528 for 2008.

5. In August 2007, Petitioner arranged to lower his monthly payments to the Board to \$50 per month (the original agreement called for Petitioner to pay \$474 monthly). However, since making that arrangement, and as noted in Factual Finding 4, he has still failed to make regular payments to the Board.

6. Petitioner did not practice medicine from the date his probation began, October 27, 2003, until March 20, 2006. His probation was tolled during the time of his non-practice, in accordance with the stipulated settlement. Now, the five-year probation is not scheduled to end until September 2, 2010.

7. On December 17, 2004, pursuant to Petitioner's guilty plea, the Los Angeles County Superior Court convicted Petitioner of violating Vehicle Code section 23152, subdivision (b) (driving while having a .08 percent or higher blood alcohol concentration), a misdemeanor. The superior court suspended the imposition of sentence, and placed Petitioner on three years of summary probation.

8. The terms and conditions of probation included, among others, paying a \$390 fine, or alternatively, serving 13 days in the county jail (less credit for one day). The evidence did not establish which condition of his criminal probation Petitioner satisfied, however, there was no evidence that Petitioner remains on criminal probation. Other conditions included paying \$1,405 in fines and restitution or alternatively serving 12 days of community service through CalTrans (there was no evidence as to which condition Petitioner satisfied), completing a three-month first offender program, and restricting Petitioner's driver's license to driving to and from work, during work, and to and from the first offender program.

9. The evidence did not establish the facts underlying Petitioner's conviction.

10. Question three, subdivision (a) of the Petition for Penalty Relief submitted by Petitioner reads as follows: "Since the effective date of your latest Medical Board of California administrative action or surrender while under investigations [*sic*] or charges pending [*sic*], have you: [b]een convicted of any criminal offense? (A conviction includes a no contest plea). (Disregard traffic offenses with a \$100 [f]ine or less)." In response, Petitioner checked the "No" box. At hearing, Petitioner argued that he denied any criminal convictions because he did not believe a misdemeanor offense was a crime.

11. Since the imposition of probation by the Board, Petitioner had not practiced medicine until March 20, 2006, when he began working as a physician (but not as a surgeon) at the Hollywood Sunset Free Clinic in Hollywood, California. Petitioner argued that he has experienced financial hardship due to his inability to find work as a surgeon. It was established that he owes monetary debts to several governmental entities, including the Internal Revenue Service. However, Petitioner did not proffer any evidence to support his claim that he is in financial hardship.

12. Petitioner chose not to testify on his own behalf.

LEGAL CONCLUSIONS

1. Cause does not exist to grant the Petition to Terminate Probation, pursuant to Business and Professions Code section 2307, as set forth in Factual Findings 1-12, and Legal Conclusions 2-5.

2. Government Code section 11522 states in pertinent part:

A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself.

3. Business and Professions Code section 2307 states in pertinent part:

(a) A person . . . whose certificate has been placed on probation . . . may petition the Division of Medical Quality for . . . modification of penalty, including modification or termination of probation.

(b) The person may file the petition after a period not less than the following minimum periods have elapsed from the effective date of . . . the decision ordering that disciplinary action:

[¶] . . . [¶]

(2) At least two years for early termination of probation of three years or more.

[¶] . . . [¶]

(d) . . . The division may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the division . . . which shall be acted upon in accordance with Section 2335.

(e) . . . the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability.

4. California Code of Regulations, title 16, section 1360.2 states in pertinent part:

When considering a petition for reinstatement of a license, certificate or permit holder pursuant to the provisions of Section 11522 of the Government Code, the division or panel shall evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).

[¶] . . . [¶]

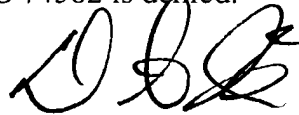
(e) Evidence, if any, of rehabilitation submitted by the applicant.

5. Petitioner did not establish, by clear and convincing evidence to a reasonable certainty, that the public would be protected if his probation were terminated. Petitioner has not been compliant with the conditions of his probation. (Cal. Code Regs., tit. 16, § 1360.2, subd. (e).) He has suffered a criminal conviction since the Board placed his license on probation. (Cal. Code Regs., tit. 16, § 1360.2, subd. (b).) By denying the conviction in his Petition for Penalty Relief, he was dishonest with the Board. (*Ibid.*) These actions belie Respondent's implicit argument that he is sufficiently rehabilitated to warrant the early termination of his probation. Furthermore, Petitioner's failure to testify on his own behalf resulted in a paucity of evidence to support any of his arguments. With no evidence to support his contentions, it is appropriate to deny Petitioner's Petition for Penalty Relief. (Bus. & Prof. Code, § 2307.)

ORDER

The Petition of Clarence Sutton Jr., M.D. to terminate the probationary status of physician and surgeon's certificate number G 74582 is denied.

Dated: April 10, 2008



DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings